

REMARKS

The Amendment is submitted in response to the non-final Office Action dated June 14, 2005. Claims 1-4, 6, 8, 10-12, 14, 16, 18 19, 21 and 23-62 are pending in this application. Claims 23-62 were previously withdrawn. In the Office Action, Claims 1-4, 6, 8, and 10 are rejected under 35 U.S.C. §112, first paragraph, Claims 1-4, 6, 8, 10-12, 14, 16, 18-19 and 21 are rejected under 35 U.S.C. 102(e) and Claims 1, 2 and 11-12 are rejected under 35 U.S.C. §103(a). In response, Applicants have amended Claims 1, 11, 19 and 21 and canceled Claims 2 and 12. These amendment do not add new matter. In view of the amendments and response set forth below, Applicants respectfully submit that the Patent Office should withdraw there rejections.

Applicants have amended Claim 21 for informal reasons.

In the Office Action, Claims 1-4, 6, 8, and 10 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Specifically, the Patent Office alleges that the claims, broadly drawn to prevent inflammation in a mammal, are not enabled by the specification.

Applicants respectfully submit that Claims 1-4, 6, 8 and 10 are enabled based on Applicants' specification. The examples disclosed in the specification sufficiently establishes that chicory is capable of preventing inflammation. Specifically, Table 1 of the specification shows that as Chicory Extract B levels increase, the level of PGE-2 decreases. Generally, enzymes such as cyclooxygenase trigger inflammation in mammals. See, specification, page 1, lines 27-30. Additionally, PGE-2 provides an indication of enzyme activity because cyclooxygenase acts as a catalyst for the production of PGE-2 from Arachidonic acid. See, specification, page 19, lines 19-25. Consequently, one can easily judge the effectiveness of an extract in preventing inflammation by the levels of PGE-2 produced within a cell line containing Arachidonic acid. As Table 1 of the specification shows clearly, as the amount of Chicory extract increase, the levels of PGE-2 decrease. Moreover, when incubating the cells with Tumor Necrosis Factor (TNF), an inflammation stimulator, 200 mcg/ml of Chicory extract decreased PGE-2 levels to 0.7% of the control. See, specification, page 20, lines 20-25. Based upon these findings, simple experimentation would produce the required Chicory extract levels to remove the final and minuscule 0.7% PGE-2 in a cell line. Because inflammation can occur due to an increase in particular enzyme activity, such as an increased activity of cyclooxygenase, the prevention of such inflammation can be inferred from the proven reduction of such enzyme

activity by using, for example, Chicory extract as Applicants have researched. In other words, by preventing an increased level of inflammation-related enzyme activity in the first place, inflammation can be prevented.

Based on at least these noted reasons, Applicants believe that Claims 1-4, 6, 8 and 10 fully comply with 35 U.S.C. §112, first paragraph. Accordingly, Applicants respectfully request that the rejection of Claims 1-4, 6, 8 and 10 under 35 U.S.C. §112, first paragraph, be withdrawn.

In the Office Action, Claims 1-4, 6, 8, 10-12, 14, 16, 18-19 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,645,534 to Hermand ("*Hermand*"). Applicants believe this rejection is improper and respectfully traverse it for at least the reasons set forth below.

Applicants have amended independent Claims 1, 11 and 19 to recite, in part, a composition comprising a therapeutically effective amount of a plant material that is thermally processed and that includes one or more phytochemical agents or active fragments capable of preventing inflammation in a mammal, wherein the plant material comprises an amount from at least 0.5% to less than 5% by weight. The amendments are supported in the specification. See, specification, page 3, lines 7-15, page 16, lines 7-9 and 28-29 and page 17, lines 20-21.

In contrast to the amended claims, *Hermand* fails to disclose or suggest elements of the present claims. For example, *Hermand* fails to disclose a composition for preventing inflammation in a mammal, which contains a plant material in an amount from at least 0.5% to less than 5% by weight of the composition. Instead, *Hermand* only discloses a chicory extract level of at least 5% and preferably 7.4%. See, *Hermand*, column 2, lines 1-4. The Patent Office admits same. See, Office Action, page 3. *Hermand* further discloses that such levels are necessary for optimal pharmacological and physical properties. See, *Hermand*, column 2, lines 4-8. Therefore, besides disclosing extract levels above those of the claimed invention, *Hermand* teaches away from the lower extract levels disclosed in the claimed invention.

For the reasons discussed above, Applicants respectfully submit that Claims 1, 11 and 19 and Claims 2-4, 6, 8, 10, 12, 14, 16, 18 and 21 that depend therefrom are novel, nonobvious and distinguishable from the cited references. Accordingly, Applicants respectfully request that the rejections of Claims 1-4, 6, 8, 10-12, 14, 16, 18-19 and 21 under 35 U.S.C. §102(e) be withdrawn.

In the Office Action, Claims 1, 2 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hermant*. Applicants believe this rejection is improper and respectfully traverse it for at least the reasons set forth below.

As previously discussed, *Hermant* fails to disclose a composition for preventing inflammation with plant material from at least 0.5% to less than 5% by weight of the composition. Furthermore, beyond not teaching or suggesting this ingredient range, *Hermant* teaches away from the range by disclosing that higher levels of plant material are required to attain the optimal pharmacological and physical properties.

For the reasons discussed above, *Hermant* does not teach, suggest, or even disclose all the elements of the present claims and thus, fails to render the claimed subject matter obvious for at least these reasons.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 1, 2 and 11-12 be reconsidered and rejection be withdrawn.

For the foregoing reasons, Applicants respectfully submit that the present application is in condition for allowance and earnestly solicits reconsideration of same.

Respectfully submitted,

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